

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

KANDI L. BREITKREUTZ

Claimant

VS.

STATE OF KANSAS

Respondent

AND

STATE SELF-INSURANCE FUND

Insurance Carrier

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Docket No. 1,003,713

ORDER

Claimant appeals the November 24, 2003 Award of Administrative Law Judge Bryce D. Benedict. The Appeals Board (Board) placed this matter on summary calendar, deeming it submitted without the necessity of oral argument as of February 10, 2004.

APPEARANCES

Claimant appeared by her attorney, George H. Pearson of Topeka, Kansas. Respondent and its insurance carrier appeared by their attorney, Scott Gates of Topeka, Kansas.

RECORD AND STIPULATIONS

The Board has considered the record and adopts the stipulations contained in the Award of the Administrative Law Judge.

ISSUES

What is the nature and extent of claimant's injury?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary file contained herein, the Board finds the Award of the Administrative Law Judge should be affirmed.

The Award sets out findings of fact and conclusions of law and it is not necessary to repeat those herein. The Board adopts those findings and conclusions as its own.

In this instance, claimant suffered accidental injury to her right wrist on January 29, 2002, when her wrist was grabbed through the "bean hole" of an inmate's cell. Claimant underwent surgical release of the first dorsal compartment of her right wrist on July 31, 2002. This surgery was performed by Brent Wallace, M.D. However, the deposition of Dr. Wallace was not taken. Claimant was, instead, referred by the opposing parties to their evaluating physicians of choice, with respondent referring claimant to board certified orthopedic surgeon Phillip L. Baker, M.D., with the examination on February 26, 2003, and claimant's attorney referring claimant to board certified plastic surgeon Lynn D. Ketchum, M.D., with that examination occurring on December 31, 2002. Both claimant's and respondent's attorneys argue deficiencies in the evaluations and opinions of the opposing doctors. Claimant argues there were obvious flaws in Dr. Baker's ratings, as Dr. Baker allegedly did not appropriately utilize the Jamar grip strength test. Respondent argues that Dr. Ketchum provided claimant a 10 percent functional impairment for a condition which he described as constrictive tenosynovitis, while at the same time acknowledging that the American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* does not provide ratings for constrictive tenosynovitis in the wrist.

The Administrative Law Judge, in averaging Dr. Baker's 2 percent impairment to claimant's right wrist with Dr. Ketchum's 10 percent impairment to the wrist, accurately found that both physicians had to resort to highly educated guesswork in order to arrive at their respective impairment ratings. Both Dr. Baker and Dr. Ketchum testified that the conditions for which they diagnosed claimant were not contained in the *Guides*. This required that both use either different portions of the *Guides* or their own expertise in rating claimant's condition. Giving equal weight to both opinions, the Administrative Law Judge averaged the two opinions, finding the truth to lie somewhere in the middle and awarding claimant a 6 percent impairment of the right upper extremity at the level of the forearm. The Board finds this to be credible and affirms same. The Board, therefore, finds claimant has suffered a 6 percent impairment to the right wrist for the injuries suffered on January 29, 2002.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Bryce D. Benedict dated November 24, 2003, should be, and is hereby, affirmed in all regards.

IT IS SO ORDERED.

Dated this ____ day of March 2004.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: George H. Pearson, Attorney for Claimant
Scott M. Gates, Attorney for Respondent
Bryce D. Benedict, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director